

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

VAUGHN H.

Claimant,

vs.

PORTERVILLE DEVELOPMENTAL
CENTER,

Service Agency.

OAH No. N 2006100663

DECISION

Administrative Law Judge Robert Walker, State of California, Office of Administrative Hearings, heard this matter in Porterville, California, on November 30, 2006.

Sergio J. Diaz, Senior Staff Counsel for the Department of Developmental Services, represented the service agency, Porterville Developmental Center.

Betty Blackmon, Clients' Rights Advocate, represented the claimant, Vaughn H.

The matter was submitted on November 30, 2006.

SUMMARY AND ISSUES

Claimant has a right to make choices concerning his life. He also has a right to be consulted before he is moved from one living unit to another.

The developmental center, in violation of claimant's right to be consulted, moved him from one living unit to another without consulting him.

Before the move, claimant spent a great deal of time with a friend of his who also is a client at the developmental center. The staff concluded that claimant's interaction with his friend was counterproductive to claimant's therapeutic program. One of the reasons the staff moved claimant was to minimize his opportunities to interact with his friend.

The issue is whether claimant has a right to move to a different living unit.

FACTUAL FINDINGS

BACKGROUND

1. Claimant, Vaughn H., is a 44 year old man, who was admitted to Porterville Developmental Center in June of 1997. He is being held there under Welfare and Institutions Code section 6500. Claimant is diagnosed as moderately mentally retarded and is, within the terms of the Lanterman Act,¹ a person with a developmental disability.

2. The developmental center has a number of living units, and each unit is grouped with one or more other units for participation in a particular program. Also, pairs of units share a common outdoor area. For example, units 13 and 14 share a common outdoor area. Clients on units that share an outdoor area have numerous opportunities to interact with each other.

3. In 2006 claimant was living on unit 14, which provides clients with program 9 and which, as noted above, shares a common area with unit 13. The developmental center staff decided that the facility would be better able to serve claimant's needs if he were moved to unit 16, which also provides program 9 but does not share a common area with unit 13. On September 27, 2006, the staff moved claimant to unit 16.

4. Porterville Developmental Center facility bulletin number 120 concerns client transfers. It provides that "Client transfers are based upon client need and, whenever possible, individual preference. Transfers other than for emergency reasons, are the result of recommendation by the client's Planning Team." The bulletin, at section II, subdivision (A)(2), provides, further, that "The client, parents, conservators, advocates and Regional Centers will be involved in the decision-making process in all non-emergency transfers." The staff failed to follow this policy in that they did not consult anyone before moving claimant. They did not consult claimant. They did not consult Betty Blackmon, claimant's advocate.

5. Claimant and Ms. Blackmon objected to not having been consulted, and claimant objected to being placed on unit 16. The staff convened a meeting with claimant and Ms. Blackmon on October 17, 2006, which was three weeks after the staff had moved claimant. After that meeting, the staff concluded that unit 16 was, in spite of claimant's objections, the best unit for claimant. The staff refused to relocate him.

¹ The Lanterman Developmental Disabilities Services Act begins at Welfare and Institutions Code, section 4400.

MOTION TO AMEND FAIR HEARING REQUEST

6. Claimant filed a request for fair hearing. In his request, he said that he wanted to be moved from unit 16. He wanted to be moved to unit 9 or program 7.

7. Unit 9 does not provide program 7.

8. At the fair hearing, claimant testified that he had made a mistake in his fair hearing request. He does not want to live in unit 9. He wants a unit that provides program 7, and he prefers unit 8. He asked to amend his fair hearing request to seek to move to unit 8. The developmental center objected to the amendment on the ground of unfair surprise. The developmental center took the position that, in reliance on the fair hearing request, the developmental center was prepared to prove that claimant should not be on unit 9. The developmental center argued that it was unfair to require it to meet claimant's new contention that he should be on unit 8.

9. The undersigned administrative law judge granted the motion to amend and offered to continue the hearing to permit the developmental center to prepare to meet claimant's contention that he should be on unit 8. After considering the possibility of a continuance, the developmental center chose to proceed with the hearing.

CLAIMANT'S TREATMENT NEEDS

10. If claimant's treatment at the developmental center is successful, he can return to the outside community. Thus, it is very important to provide him with appropriate treatment that can be expected to move him toward that goal.

11. Claimant has particular treatment needs that are addressed by the therapies and counseling that are a part of program 9. Claimant has a history of dangerous behavior and is subject to three open behavior plans. One behavior plan concerns harm to himself. One concerns harm to others. The third concerns verbal aggression.

12. Claimant has a friend, N. S., who lives on unit 13, which is served by program 7. When claimant lived on unit 14, which is served by program 9, he had many opportunities to interact with N. S. because, as noted above, units 13 and 14 share a common outdoor area. Claimant and N. S. often had lunch and dinner together, took walks together, sat together, and spent other time together. The developmental center presented testimony that, while the staff encourages clients to form and maintain friendships, the friendship between claimant and N. S. was counterproductive for claimant's treatment. From time to time, N. S. would prefer to be left alone, and when he did, claimant tended to become verbally aggressive and act out in ways that were dangerous to himself and others. One reason for moving claimant was to eliminate these occasions of his reacting to incidents involving N. S.

13. In 2005, claimant had 78 incidents of verbal aggression. These incidents included threats to harm others, threats to cause staff members to be dismissed, cursing,

calling others foul names, and using racial or sexual slurs. There was no month in which claimant had fewer than six incidents of verbal aggression.

14. An April 29, 2005, addendum to claimant's individual program plan (IPP) concerns an incident that occurred after claimant became upset over visits with N. S. Claimant began discussing the matter with members of the staff but was becoming verbally aggressive. Another client intervened. Claimant and the other client became involved in a physical altercation, and the other client hit claimant in his right eye.

15. A September 15, 2005, addendum to claimant's IPP concerns behaviors claimant had been exhibiting for a few days. He had become angry, made threats, and was verbally aggressive.

16. On January 21, 2006, claimant began yelling at N. S. The staff redirected claimant's attention. He then became verbally aggressive toward the staff.

17. On January 22, 2006, claimant followed N. S. and harassed him with verbal aggression.

18. On February 14, 2006, claimant became verbally aggressive.

19. On February 15, 2006, claimant engaged in a physical assault. Members of the staff placed him in five point locked leather restraints.

20. On May 8, 2006, claimant became verbally aggressive and threatened to harm himself and others.

21. On May 9, 2006, claimant became verbally aggressive toward a client from a different unit.

22. On September 11, 2006, N. S. refused to talk with claimant. Claimant became upset and yelled and swore at other clients and at staff.

23. On September 12, 2006, N. S. accused claimant of having scratched him on his face. Claimant yelled and swore at N. S.

24. On September 26, 2006, claimant threatened N. S. Staff tried to redirect claimant's attention, but the situation escalated. Ultimately, the staff physically restrained claimant.

25. When claimant was on unit 14, he tended not to participate effectively in his therapy program or his work program. He often was absent and often paid little attention.

26. As noted above, on September 27, 2006, the staff moved claimant to unit 16. Also as noted above, after claimant and Ms. Blackmon complained about the staff's violation of the policy stated in bulletin number 120, the staff met with them. After that meeting,

Martin Michener, the supervisor for unit 16, wrote an addendum to claimant's IPP. It is dated October 17, 2006. Mr. Michener wrote, in part, as follows:

On 9/27/06, Vaughn was transferred to unit 16 . . . from unit 14. The team felt this move would be therapeutic and beneficial to Vaughn. Vaughn and a peer on Unit 13 have a special friendship that, at times, causes problems for both clients. They argue and, in some occasions, have physical altercations. Prior to this move, Vaughn and this peer were having a difficult time getting along, and Vaughn's behavior was off baseline

27. It is found that the friendship between claimant and N. S. was counterproductive for claimant's treatment.

28. The developmental center has not completely taken away claimant's right to see N. S. If claimant and N. S. happen to cross paths while in the open grounds, they can communicate with each other. Moving claimant to unit 16, however, does cause claimant and N. S. to have very few opportunities to interact with each other.

29. In the two months between the date claimant was moved to unit 16 and the date of the hearing in this matter, he had only two incidents of verbal aggression. The developmental center presented evidence that, since claimant was moved to unit 16, he has been attending his programs regularly and doing the things he is supposed to do.

PROGRAM 7, WHICH IS THE PROGRAM PROVIDED ON UNIT 8, IS NOT APPROPRIATE FOR CLIMANT

30. The developmental center provided evidence that claimant needs program 9 and that program 7 is not appropriate for him.

31. Program 7 is for adolescents and clients who are mentally ill or who do not fall into a specified category. Mr. Michener testified that unit 8, which is served by program 7, is for clients who are medically fragile or potential victims. Claimant, with his verbal aggression and his threats to harm himself and others, would not be a good fit in this environment.

32. Moreover, program 7 is not equipped to address claimant's particular treatment needs. Program 9 is equipped to do that. In fact, it is designed for precisely the treatments claimant needs.

33. Thus, claimant needs to be in a unit that provides program 9.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4502, subdivision (j), concerns the right of persons with developmental disabilities to make choices in their own lives. The matters

concerning which they have a right to make choices include, “where and with whom they live, their relationships with people in their community, the way they spend their time, . . . the pursuit of their personal future, and program planning and implementation.” Claimant contends that the developmental center, by moving him to unit 16 and by making it unlikely that he will see N. S., has denied him these rights.

2. The right to make choices as to where one lives and with whom one maintains relationships is not absolute. Indeed, when one is committed to a developmental center, one’s control over those matters is limited. Here, the staff made a reasonable decision that claimant was not progressing as he should and that his interaction with N. S. was contributing to his lack of progress. Because N. S. is on unit 13, it was inappropriate for claimant to remain on unit 14. Also, the evidence is clear that claimant needs program 9. Claimant has particular treatment needs that are addressed by the therapies and counseling that are a part of program 9. He has a history of dangerous behavior and verbal aggression. Program 8, which is the program claimant is requesting, is for clients who are medically fragile or potential victims. Claimant, with his verbal aggression and his threats to harm himself and others, would not be a good fit in this environment. Moreover, in the two months claimant has been on unit 16, he has done very well.

3. It is unfortunate that claimant cannot spend time with his friend, but the evidence supports a finding that the staff is correct in concluding that the relationship was counter productive for claimant’s therapy.

4. The developmental center acknowledges that the staff violated the policy stated in bulletin number 120. And such violations are not to be condoned. Claimant and Ms. Blackmon should have had an opportunity to participate in the discussion that led to claimant’s being moved. But allowing claimant to move into a unit that does not provide the therapy program he needs would not be an appropriate remedy.

5. Claimant’s appeal from the developmental center’s moving him to unit 16 should be denied.

ORDER

Claimant’s appeal is denied.

DATED: December 14, 2006



ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.